INDEX

	Page
Petition for a Writ of Certiorari:	
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	5
Raising the Federal Question	9
Reasons for Granting the Writ	15
Conclusion	22
Appendix (Opinion, Judgment and Mandate of the Supreme Court of Alaska)	

INDEX OF CITATIONS

Cases

Adler v. Board of Education, 342 U.S. 485	16
Aptheker v. Secretary of State, 378 U.S. 500	19
Baggett v. Bullitt, 377 U.S. 360	16
Bailey v. Fairbanks Independent School District, 370 P. 2d 526 (Alaska Sup. Ct.)	13
Bates v. Little Rock, 361 U.S. 516	19
Beauharnais v. Illinois, 343 U.S. 250	18
Blue v. Stockton, 355 P. 2d 393 (Alaska Sup. Ct.)	15
Cafeteria Workers v. McElroy, 367 U.S. 886	17
Cramp v. The Board of Public Instruction, 368 U.S. 278	16
Davis v. Wechsler, 263 U.S. 22	10
DeJonge v. Oregon, 299 U.S. 353	19
Fairview Pub Utility District No. 1 v. City of Anchorage, 368 P. 2d 540 (Alaska Sup. Ct.)	13
Garrison v. Louisiana, 379 U.S. 65	15, 17, 18
Gibson v. Florida Legislative Committee, 372 U.S. 539	19
Greene v. McElroy, 360 U.S. 474	17

Page

Gregory v. Pedilla, 379 P. 2d 951 (Alaska Sup. Ct.) .. 12
In re Mackay (Alaska Sup. Ct., Op. No. 278, Jan. 30, 1965) 12
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 17
Konigsberg v. State Bar, 353 U.S. 252 13
Louisiana v. NAACP, 366 U.S. 293 19
McIntyre v. State, 376 P. 2d 615 (Alaska Sup. Ct.) 12
NAACP v. Alabama, 357 U.S. 449 ..... 12, 14, 19
NAACP v. Alabama, 377 U.S. 288 ..... 12, 14, 19
NAACP v. Button, 371 U.S. 415 19
New York Times Co. v. Sullivan, 376 U.S. 254 .. 15, 17, 18, 20
Rogers v. Alabama, 192 U.S. 226 13
Shelton v. Tucker, 364 U.S. 479 ..... 16, 19, 22
Shuttlesworth v. Birmingham, 376 U.S. 339 12
Slochower v. Board of Education, 350 U.S. 551 16
Staub v. Baxley, 355 U.S. 313 ..... 10, 14
Stromberg v. California, 283 U.S. 359 20
Thomas v. Collins, 323 U.S. 516 19
Torcaso v. Watkins, 367 U.S. 488 16
United Public Workers v. Mitchell, 330 U.S. 75 18
Whitney v. California, 274 U.S. 357 18
Wieman v. Updegraff, 344 U.S. 183 ..... 16, 17, 22
Williams v. Georgia, 349 U.S. 375 ..... 12, 13

CONSTITUTIONS

Constitution of the United States:

First Amendment 2, 9, 15, 19, 21
Fourteenth Amendment 2, 9, 15, 21

Constitution of the State of Alaska:

Article I, §§ 5, 6 and 7 10

STATUTES

Alaska Code of Laws Annotated, 1949:

Section 37-511 3
Section 37-512 3
Section 37-513 4

Alaska Statutes: Page

Section 14.20.200 4

Rules

Rules of the Supreme Court of Alaska:

Rule 11(a)(8) 10, 13
Rule 11(f) 11, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners,*

-v.-

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

Petitioners James A. Watts and Walter B. Blue pray that a writ of certiorari issue to review the judgment of the Supreme Court of Alaska entered on September 21, 1964 in *James A. Watts, et al.* v. *Seward School Board et al.*

OPINIONS BELOW

The opinion of the Supreme Court of Alaska is reported at 395 P. 2d 372. It is reprinted in the Appendix, pp. 1a-7a, *infra.* The Superior Court of Alaska filed no opinion.

JURISDICTION

The judgment of the Supreme Court of Alaska was entered on September 21, 1964. On December 21, 1964 Mr. Justice Stewart entered an order extending the time to file a petition for certiorari until February 19, 1965. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Is the discharge of public school teachers on the ground of "immorality" for soliciting the support of an individual or a group to effectuate the recall of members of the Board of Education, an unconstitutional infringement of the teachers' rights to political expression which are guaranteed by the First and Fourteenth Amendments to the Constitution of the United States?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

United States Constitution:

Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment XIV:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutes:

A.C.L.A., 1949 § 37-5-11 as amended. *Employment of administrators and teachers: Procedure for notification in non-retention cases.* School boards in the several school districts of Alaska and the Territorial Board of Education as the operating school board for schools outside districts may hire administrators and teachers regularly qualified in accordance with Territorial Board of Education Rules and Regulations and issue contracts to same for ensuing school year anytime after January 1, and shall notify administrators and teachers of non-retention in writing postmarked or delivered on or before March 15. In the case of teachers and administrators employed by the Territorial Board of Education the notification shall be by registered or certified mail postmarked not later than midnight, March 15, and shall be issued by the Commissioner of Education or his designated representative. In the event that written notification of non-retention together with a clear statement of cause including a bill of particulars for such non-retention is not issued before March 15, the administrators' and teachers' contracts shall be continued for the ensuing school year in conformity to the Territorial and local salary stipulations including any annual increments. Teachers and administrators who are holders of temporary certificates are excluded from any rights under this Act.

A.C.L.A., 1949 § 37-5-12 as amended. *Definition of cause.* The term "cause" as used in section I above (37-5-11 herein) shall be based solely upon: (a) Incompetency which is defined as the inability

or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner; or (b) Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect; or (c) Substantial non-compliance with the school laws of the Territory or such regulations of the Territorial Board of Education or any other governmental agency as are applicable or of the employing school district; except, that any necessary reduction of staff occasioned by a decrease in school attendance of the district may warrant, in the absence of any of the above reasons, the non-retention of a teacher.

A.C.L.A., 1949 § 37-5-13 as amended; *Provision for hearing.* A teacher or administrator given notification of non-retention under the terms of this Act (37-5-11-37-5-15 herein) by a school district board shall have the right to on or before the March 25 immediately following notify the President of the school district board in writing that he or she demands a hearing before said school board. The teacher or administrator shall have the right to demand in the above notification that: the hearing be either public or private; he or she be represented by counsel; and he or she have the right and privilege of facing at such hearing any person who has made allegations detrimental to his or her character or which are used as a basis for any decision of the board. Upon receipt of such notification the President of the school board shall immediately arrange for such a hearing, which hearing shall be conducted and concluded with dispatch and shall notify the teacher or administrator in writing of the date, time, and place of said hearing. A written transcript or tape or similar recording of the proceedings shall be kept and transcribed copies furnished to the school board, the teacher or administrator, and the Commissioner of Education. The final vote of the

Board shall be by roll call and the vote shall be recorded in the Minutes of the meeting. A written notification of the decision of the school board shall be furnished to the teacher or administrator and the Commissioner of Education within ten days from the date of the hearing.

A.S. 14.20.200 (Sec. 3(c), Chapter 92, SLA 1960) *Appeal by teacher or administrator employed by school board.* A teacher or administrator, except one employed by the department, may appeal a decision of a school board. The appeal shall be made in writing to the commissioner within 20 days of notice of the original decision. A hearing shall be conducted by three members of the state Board of Education within a reasonable time and a decision of a majority of the board is final.

STATEMENT OF THE CASE

Petitioners Watts and Blue have taught school at Seward, Alaska for eight and fifteen years respectively. They were active in the formation of the Seward chapter of the American Federation of Teachers (AFL-CIO). They circulated a Petition for Recall of the members of respondent School Board, and with other members of the A. F. T. chapter voiced their protests against actions of the School Superintendent and the School Board in an open letter circulated among the public.

In March 1960 the School Board notified each petitioner that he was being non-retained, stating the reasons therefore in a Bill of Particulars. Petitioners were entitled to, and received a hearing before the School Board, which affirmed its determination to discharge them. On appeal, the State Board of Educa-

tion reversed the School Board and directed it to give each petitioner a new hearing. At the second hearing the School Board reaffirmed its decision and this time the State Board sustained its determination. Petitioners thereupon filed a Petition for Writ of Review in the Superior Court of the State of Alaska (Third Judicial District). The Court reversed the State Board and later issued an order requiring it to show cause why petitioners should not be reinstated as teachers. The State Board then entered a Third Decision, again affirming the School Board's non-retention of the petitioners.

Petitioners then brought a second petition for writ of review in the Superior Court. The Superior Court now denied review without opinion. On appeal the Supreme Court of Alaska affirmed its decision. It is that judgment which petitioners now urge this Court to review.

The Supreme Court thus described the conduct on which it was sustaining the discharges:

> "The immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, 'We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board,' or words to that effect." (App. p. 3a *infra*).

The findings of the School Board (sustained by the State Board in its July 26, 1962 decision) to which

this statement refers are set forth in the margin.[1] The state Supreme Court observed that the Alaska legislature had expressly defined "immorality" as

> "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect".

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[1] "19. On or about April 28, 1959, James Watts asked Mr. and Mrs. Benjamin Frampton, who at that time were members of the faculty of Seward Public Schools, if they would go along with a group of which Watts was a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of schools. (The Board resolves the conflict in testimony between Mr. and Mrs. Frampton and Mr. Watts in favor of Mr. and Mrs. Frampton, crediting their testimony and discrediting that of Mr. Watts. This decision is based in part on the demeanor of the individuals.)

"20. In the Spring of 1959, James Watts solicited Monty H. Richardson, who, at that time, was a school teacher in the Seward Public Schools, to join a group the purpose of which was to get rid of Mr. Fabricius as Superintendent of Schools. (The School Board resolves the conflict in testimony between Mr. Richardson and Mr. Watts in favor of Mr. Richardson, by crediting Mr. Richardson's testimony and discrediting the testimony of Mr. Watts. This decision is based in part upon the demeanor of the two witnesses.)

"21. The conduct of James Watts described in findings 19 and 20 tended to bring the teaching profession into public disgrace and disrespect.

"22. The conduct of James Watts described in findings 19 and 20 tended to bring James Watts into public disgrace and disrespect.

"26. In an attempt to gain popular support for a recall vote involving the Seward Public School Board members, Walter B. Blue made a speech to the International Longshoremen and Warehousemen's Union in Seward, Alaska, in which he stated 'We have been unable to get rid of the Superintendent, so we are going to get rid of the Board,' or words to that effect.

"27. The conduct of Walter B. Blue described in finding 26 tended to bring the teaching profession into public disgrace or disrespect.

"28. The conduct of Walter B. Blue described in finding 26 tended to bring Walter B. Blue into public disgrace or disrespect."

The July 26 opinion of the State Board held that this was a much broader term than "conduct which would normally shock the conscience of good men or offend the morals of the community." The Supreme Court sustained as supported by substantial evidence the findings of the School Board quoted at n.1 *supra*. It thereupon concluded:

> "In our opinion the tactics shown to have been employed by the appellants to get the school superintendent and members of the School Board removed from their positions of responsibility in the community had a tendency to bring the appellants and the teaching profession into public disgrace or disrespect and sustained (sic) the administrative agency findings to that effect." (App. p. 5a *infra*).

The Court found it unnecessary to pass on the only other allegation of misconduct which had been sustained by the State Board in its July 26, 1962 decision; namely, that petitioners had violated a school regulation by distributing an open letter to the Seward School Board.[2] However, the Court delivered a pointed admonition:

> "However, for the guidance of those in the teaching profession we suggest that it will be in the best interests of the school children, the teachers and the economy generally for teachers with grievances to follow an orderly procedure of seeking redress first at the superintendent level and then at the school board level." (App. p. 6a, *infra*.)

[2] The Open Letter contained protests by petitioners and other members of the American Federation of Teachers Local against the Superintendent of Schools and the School Board. The finding of the School Board sustained by the State Board with respect to this allegation is as follows: "9. The distribution of the Open Letter to the Seward School Board by teachers Watts and Blue was a violation of Regulation E(7) of the School Board Regulat

RAISING THE FEDERAL QUESTION

At the close of its opinion the Supreme Court of Alaska said:

> "The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble and speak freely have been abridged in this case and that they have been deprived of their personal liberties and property rights without due process of law. They treat the subject in a very cursory fashion and cite us to no case law in support of their claim. Under these circumstances we need not consider the point." (App. pp. 6a-7a, *infra*).

The Court thus acknowledged that the constitutional question was raised, but declined to consider it. While it does not seem even arguable that this Court is thereby deprived of jurisdiction the special obligation of counsel to the Court with respect to constitutional issues prompts us to discuss the point.

1. The constitutional discussion in petitioners' brief below is set forth in the margin.[3] We submit that this

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[3] "There are involved in this appeal issues far more fundamental than those heretofore mentioned. We submit that both the School Board and the State Board contrived to deprive appellants of valuable rights without according them due process of law. We further submit that the construction placed on #2(b) and #(c) of Ch. 71, S.L.A. 1957 by the School Board and by the State Board and sanctioned by the lower court effectively abridged appellants' constitutional rights to assemble and speak freely.

"Ours is a free society only because individual men are protected in their individual rights and liberties. It is both an anomaly and blessing that the very charters which establish our State and Federal governments also protect individual men in the exercise of their individual rights and liberties. The freedoms to speak out, to voice protest, to utter grievances and to assemble for such purposes are freedoms protected in both the Constitution of the United States (Amendments I, XIV #1) and the Constitution of

argument "plainly and reasonably" asserted the federal rights they reassert here and that review cannot therefore be foreclosed. *Davis* v. *Wechsler,* 263 U.S. 22, 24; *Staub* v. *Baxley,* 355 U.S. 313, 318-319.

2. The Supreme Court of Alaska has a rule respecting the argument in briefs on the merits.: Rule 11 (a)(8) provides that the brief shall contain:

> "The argument, stating clearly the points of fact and of law being discussed, with reference to the pages of the record and authorities relied upon in support of each point. When a statute, regulation, ordinance, or opinion, is cited, so much thereof as may be deemed necessary to the decision of the case shall be set out verbatim, either at this point, or if the matter quoted is length, in an appendix."

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the State of Alaska (Article I, #5, 6 and 7). Appellants Watts and Blue legitimately exercised those constitutional rights—with heavy personal and financial sacrifice. The interpretation of Ch. 71, S.L.A. 1957 adopted by the School Board and by the State Board, putting appellants' teaching jobs in jeopardy because they voiced to others their dissatisfaction with the Seward School Board and the Superintendent, was an unconstitutional interpretation of that Act. The hearings conducted by the School Board and by the State Board for the purpose of confirming the termination of appellants' employment as teachers, resulted in decisions which were palpably contrary to the law and evidence. This was a deprivation of appellants' personal liberties and property rights without due process of law.

"Therefore, for these very fundamental reasons, originating in a political philosophy uniquely American, the ruling of the lower court must be reversed. If this Court concurs in our contention then the decision of this case may endure as one additional segment of the bulwark against those ever-pressing currents of ignorance and acrimony always fed by men of fearful and faint heart." Appellants' brief, Alaska Sup. Ct. No. 427, pp. 30-31.

The argument in petitioners' brief complied fully with this rule. No record reference was appropriate because the constitutional argument was addressed to the proceeding in its entirety. The constitutional provisions relied on were cited in the body (see n. 3, *supra*) and were set out verbatim at p. vi. There is nothing in the Supreme Court's rules imposing either qualitative or quantitative standards for the argument, nor is there a requirement that "case law" be cited, the main deficiency asserted in the opinion below. (App. p. 7a, *infra*)[4]

Moreover, the Supreme Court's rules are quite precise respecting the sanctions "When a brief fails to comply with the requirements of these rules."[5] Refusal to consider a point insufficiently briefed is not one of them. On the contrary, it is provided that the party is either to be given an opportunity to comply, or that the error will be disregarded.

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[4] Indeed, the language of the rule allows the inference that no such requirement was intended. The rule says "*When* a statute, • • • or opinion is cited • • •". (Emphasis supplied.) If it were understood that citation of such authorities was to be mandatory, the more natural phrasing would be "The statute • • • and opinions which are cited shall be set out verbatim to the extent deemed necessary • • •."

[5] Rule 11(f) provides: "When a brief fails to comply with the requirements of these rules, this court on application of any party or on its own motion and with or without notice as it may determine, may: 1) order the brief to be returned to counsel for correction by interlineation, cancellation, revisions or replacement in whole or in part, and to be deposited with the clerk within a time specified in the order; 2) order the brief stricken from the files, with leave to file a new brief within a specified time; or 3) disregard defects and consider the brief as if it were properly prepared."

This Court's jurisdiction may not be foreclosed when there has been substantial compliance with a state procedural rule, *NAACP* v. *Alabama,* 377 U.S. 288; *a fortiori* it may not be precluded when compliance was complete.

3. It is plain from Rule 11(f) that the Alaska court has discretion to disregard procedural defects in the brief. This brings into play the principle of *Williams* v. *Georgia,* 349 U.S. 375, 383: "A state court may not in the exercise of its discretion, decline to entertain a constitutional claim while passing upon kindred issues raised in the same manner." Accord: *Shuttlesworth* v. *Birmingham,* 376 U.S. 339 (*per curiam*).

4. It is true that there are some opinions of the Supreme Court of Alaska wherein the Court states that it declines to consider an argument because it was not briefed, e.g. *McIntyre* v. *State,* 376 P.2d 615, 618; *Gregory* v. *Pedilla,* 379 P.2d 951, 954-5. We have found no prior case however, in which the Court refused to pass on a question which had been argued in a reasoned, though brief discussion. Particularly in light of the express provisions dealing with this subject in the Supreme Court rules—which were here complied with—it cannot be said that petitioners had fair notice of the procedural requirement which was imposed on them, Compare *NAACP* v. *Alabama,* 357 U.S. 449, 457-58; *NAACP* v. *Alabama,* 377 U.S. 288, 301.

In any event, the Court's opinions themselves show that whatever its breadth may be, the rule that issues will not be considered if not adequately briefed is discretionary in its application. A recent example is *In re Mackay* (Alaska Sup. Ct., Opinion No. 278, Jan. 30, 1965), where the Court said:

> "Neil S. Mackay, respondent in the above entitled disciplinary proceeding wherein he was disbarred from the practice of law by this court, has petitioned for a rehearing on nine separate grounds. The respondent's brief does not deal with these grounds in any detail and ignores some of them entirely. However, we shall discuss the six grounds which we deem to have sufficient merit to warrant our consideration." (Id., p. 1)

See also *Fairview Pub. Utility District No. 1* v. *City of Anchorage,* 368 F.2d 540; *Bailey* v. *Fairbanks Independent School District,* 370 P.2d 526, 529.[6] Thus, the principle of *Williams* v. *Georgia,* 349 U.S. 375 discussed above supports this Court's jurisdiction on an additional ground.

5. If the procedural rule applied against petitioner is considered on its merits it is likewise inadequate.

This case is the converse of *Rogers* v. *Alabama,* 192 U.S. 226, where prolixity of the motion raising the federal question was held not to justify withdrawal of the question from the consideration of this Court. Even more closely in point is *Konigsberg* v. *State Bar,* 353 U.S. 252. Konigsberg had raised his constitutional claim in his petition for review of the bar examiner decisions, but not in his brief to the Supreme Court,[7] which had a rule very similar to Rule 11(a)(8) of the court below. This Court held that review of the constitutional issue here was not foreclosed.

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[6] In this very case the Court below said "we *need* not consider the point" (App. p. 7a, infra, emphasis supplied), rather than "We *may* not consider the point."

[7] His brief did refer to the portions of the record before the Bar Examiners where constitutional arguments were made and cases cited. See 353 U.S. at 256, n. 7.

Taken as an original proposition the establishment of quantitative or qualitative standards of briefs as a prerequisite for review here would be unjust to the parties and unworkable. There are few more difficult problems in advocacy than to evaluate the proper length of an argument, particularly when there is more than one ground on which counsel believes he may prevail. The present case is illustrative. The issue of statutory interpretation was a very substantial one; even with the advantage of hindsight, the view of the court below that criticism of the school board is "immorality" (even as defined in the Alaska statute) is somewhat startling. Counsel can hardly be faulted, nor his clients penalized, because emphasis in the state court brief was placed on this state issue.

Any rule of adequacy would be unworkable, even if it were susceptible to intelligible formulation. A rule that a constitutional argument must be at least "X" number of pages, would be absurd in a case where there was a clear violation of the Constitution under this Court's precedents. On the other hand, any test which lacked mathematical precision would inevitably be subjective in application, as well as a trap to counsel. Moreover, since, in the final analysis this Court must consider whether federal questions were adequately raised below, it would require this Court in each case to examine countless opinions and briefs in the lower court, to determine whether the State court's properly applied its qualitative test in declining to consider the constitutional point. Compare the analysis in *Staub* v. *Baxley*, 355 U.S. 313, 319-20; *NAACP* v. *Alabama*, 357 U.S. 449, 456-458, *NAACP* v. *Alabama*, 377 U.S. 288, 297-301. Most important, a new technique will have been discovered for evading the jurisdiction of this Court as the ultimate arbiter of federal law.

REASONS FOR GRANTING THE WRIT

I

Earlier this Term this Court reaffirmed the holding that "the First and Fourteenth Amendments embody our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open, and that it may include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.'" *Garrison* v. *Louisiana*, 379 U.S. 65, 75, following *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270. In the *Times* and *Garrison* cases it was held that the states may not apply "either civil or criminal sanctions" (379 U.S. at 74) to penalize the exercise of the high constitutional right to criticize public officials, unless the criticism is a deliberate or reckless falsehood. The question presented by this case is whether a state may deprive a public school teacher of his employment for exercising the same right, for petitioners have been discharged for exercising their right of public expression in its most rudimentary form—namely, urging other citizens to exercise their suffrage to recall government officials.[8] In light of this Court's recent decisions regarding the constitutional rights of public employees, this question is not difficult; on the contrary, it is clear that the Court below erred. What was said in *Cramp* v. *The Board of Public Instruction*, 368 U.S. 278, 288 is directly apposite here:

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[8] Alaska law provides for recall election regarding school board members, *Blue* v. *Stockton*, 355 P. 2d 395, a case brought by petitioner Blue to compel the Seward city council to hold the recall election.

> "As in *Wieman* v. *Updegraff*, we are not concerned here with the question 'whether an abstract right to public employment exists.'" 344 U.S. 183, at 192. Nor do we question the power of a State to safeguard the public service from disloyalty. Cf. *Slochower* v. *Board of Education*, 350 U.S. 551: *Adler* v. *Board of Education*, 342 U.S. 485. It is enough for the present case to reaffirm "that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." *Wieman* v. *Updegraff*, *supra*, at 192. 'The fact . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution.'" *Torcaso* v. *Watkins*, 367 U.S. 488, at 495-496."

This principle was reaffirmed most recently in *Baggett* v. *Bullitt*, 377 U.S. 360, 380; Cf. *Shelton* v. *Tucker*, 364 U.S. 479.

The governing consideration of the *Times* and *Garrison* decisions was that civil and criminal sanctions would, unless sharply circumscribed, inhibit that discussion of public affairs which is the mainstay of our political system. The loss of public employment is equally likely to raise "the pall of fear and timidity [which] imposed upon those who did give voice to public criticism [creates] an atmosphere in which the First Amendment freedoms cannot survive." 376 U.S. at 278. An individual who must support himself and his family is, if anything, more vulnerable to a threat to his employment than a business is to a money judgment. Moreover, a teacher discharged for criticism of public officials can expect to find serious difficulty particularly by those who may think of him

as a potential troublemaker. Cf. *Greene* v. *McElroy*, 360 U.S. 474, 486-487.[9]

Alaska's interference with criticism of government officials is far more pervasive than that which was struck down in the recent libel cases. As the case comes here there is no finding that either of the petitioners uttered an untruth much less that he was guilty of "deliberate or reckless falsehood." 379 U.S. 64 at 75. The inhibition of true criticism of public officials is thus stark and direct. What interest does Alaska assert to justify this invasion of constitutional rights of expression? The State Court said that petitioners' actions "had a tendency to bring [them] and the teaching profession into public disgrace or disrespect." If by "the teaching profession" is meant those government officials who are criticized, the *New York Times* and *Garrison* cases make clear that the states may not exalt concern for the reputation of public officials above "the paramount public interest in a free flow of information to the people concerning public officials, their servants." 379 U.S. at 77. On the other hand, if the phrase is intended to refer to the teaching profession generally, it is but a thinly disguised version of the concept of "libel on government" which was squarely rejected in the *New York Times* case, 376 U.S. at 291-292. The suggestion that a speaker casts discredit upon himself by engaging in truthful criti-

[9] The discharged teacher's difficulties are compounded because the School Board's action operates to bestow a badge of "immorality" upon him for criticizing public officials. Compare *Wieman* v. *Updegraff*, 344 U.S. 183, 190-191; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 140-141; Cf. *Cafeteria Workers* v. *McElroy*, 367 U.S. 886, 898. "Immorality" is the statutory "cause"; those to whom the teacher must apply for new employment cannot be expected to be aware of the unusual and artificial definition of that term.

cism, while more novel, is likewise constitutionally impermissible. The *New York Times* case recognized that it is as much the citizen's "duty to criticize as it is the officials' duty to administer." 376 U.S. at 282. And the Court quoted with approval the "classic formulation" in the concurring opinion of Mr. Justice Brandeis in *Whitney* v. *California*, 274 U.S. 357, 375-376:

> "Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government."

See also *Beauharnais* v. *Illinois*, 343 U.S. 250, 263-264. In short, "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75. Alaska may believe that the citizen who criticizes public officials truthfully casts discredit upon himself but the framers of the Federal Constitution thought otherwise. And even assuming that this judgment on the effect of the speaker's reputation were permissible, punishment of such speech would not be permitted because of the transcendent importance of criticism itself to the operation of government.[10]

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[10] When viewed in terms of conflicting interests this case is, therefore, a far cry from *United Public Workers* v. *Mitchell*, 330 U.S. 75. There the Court sustained an Act of Congress which prohibited partisan political activity by governmental employees, to assure the integrity and efficiency of the civil service and the political process. Indeed in emphasizing the limited scope of the prohibition, the Court implicitly foreclosed more sweeping restrictions such as those which Alaska has imposed.

> "It is only partisan political activity that is interdicted. It is active participation in political management and political campaigns. *Expressions, public or private, on public affairs,*

II

The seriousness of Alaska's infringement on constitutionally protected rights is even clearer when it is considered precisely what petitioners did to incur discipline. Petitioner Watts asked three people (two of them husband and wife) to "go along with" or "join" a group whose purpose was to oust the school superintendent. See n.1, *supra*. It is now entirely beyond dispute that the freedom of assembly protected by the First Amendment encompasses the right of association.[4] Of course, as *Shelton* v. *Tucker*, *supra*, illustrates, the right of association may no more be inhibited by discharge from public employment than by criminal, civil or other administrative sanctions.

Watts' case is closely comparable to *Thomas* v. *Collins*, 323 U.S. 516, where this Court held that a state could not constitutionally prohibit a union leader from explaining the advantages of union membership and soliciting membership in a union.[11] Association for political purposes enjoys no lesser status than association in a labor union. We submit that in no case has

---

personalities and matters of public interest, not an objective, of party action, are unrestricted by law so long as the government employee does not direct his activities toward party success." 300 U.S. at 10. (emphasis supplied.)

[11] *Aptheker* v. *Secretary of State*, 378 U.S. 500; *NAACP* v. *Alabama*, 377 U.S. 1; *Gibson* v. *Florida Legislative Committee*, 372 U.S. 539; *NAACP* v. *Button*, 371 U.S. 415; *Louisiana* v. *NAACP*, 366 U.S. 293; *Shelton* v. *Tucker*, 364 U.S. 479; *Bates* v. *Little Rock*, 361 U.S. 516; *NAACP* v. *Alabama*, 357 U.S. 449; *Thomas* v. *Collins*, 323 U.S. 516; *DeJonge* v. *Oregon*, 299 U.S. 353.

[5] "The right thus to discuss, and inform people concerning the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly." 323 U.S. 516 at 532.

governmental interference cut as sharply against the ultimate purpose for the protection of the right of association, namely that it is an essential attribute of the political process in a democratic society.

Petitioner Blue made a speech to members of another labor union "in an attempt to gain popular support for a recall vote involving the Seward Public School Board members." See n. 1, *supra*. A more clearly privileged occasion for criticism of public officials can not readily be imagined.

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Stromberg* v. *California*, 283 U.S. 359, 369."; quoted with approval in *New York Times*, 376 U.S. at 269.

The Supreme Court of Alaska has thus sanctioned interference not only with political activity generally but with its exercise in its primary form. Its judgment should not be permitted to stand.

III

If only two school teachers had been deprived of their employment for exercising fundamental constitutional rights, review by this Court as the final protector of such rights would be appropriate. If only in Alaska teachers are to be deprived of the benefits of citizenship in a democratic society review here would be fully justified. But the implications of this case far transcend the fates of these two petitioners or even of all the teachers of the State of Alaska. If school

teachers may not criticize their School Board it is not only the teachers but the educational system and ultimately the society which is the loser. The education of the young is among the most crucial but complex problems of any society, as has been recognized at least since Plato wrote *The Republic.* Discussion of these problems in the context of our public schools necessarily involves either commendation or criticism of those charged with administering the school system.

Yet Alaska considers such criticism by its teachers to be "immoral" conduct subjecting them to discharge, and thereby seriously inhibits the participation of those who by training and interest obviously can make a particularly valuable contribution. Precisely because of the legitimate public concern with education school board members are under constant pressure. They are no more likely to be saints than other public officials and may well consider criticism by their teacher-employees to be tantamount to betrayal. Is a teacher in Alabama now to be subject to discharge because he criticizes the school board for desegregating too slowly, or one in New York because he criticizes the School Board for desegregating too quickly? Will a teacher be subject to discharge for criticizing at a PTA meeting the reluctance of the school board to approve new educational methods?[12]

This case takes on particular significance because of its impact on the teaching profession, for any interference with academic freedom itself constitutes a threat to First Amendment rights.

> "By limiting the power of the States to interfere with freedom of speech and freedom of inquiry

[12] Of course, we are not concerned here with discipline of teachers for refusing to follow the prescribed curriculum *in their teaching.*

> and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation. Such unwarranted inhibition upon the free spirit of teachers . . . has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers."

Wieman v. *Updegraff*, 344 U.S. 183, 195 (concurring opinion), quoted with approval in *Shelton* v. *Tucker*, 364 U.S. 479, 487. As the Court said in *Shelton* "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." Their protection in the Alaska school system can now be achieved only by the exercise of this Court's power of review.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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February 1965.

APPENDIX

APPENDIX

THE SUPREME COURT OF THE STATE OF ALASKA

File No. 427

JAMES A. WATTS AND WALTER B. BLUE, *Appellants*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Appellees*.

Opinion

[No. 251—September 21, 1964]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Hubert A. Gilbert, Judge.

Appearances: Peter B. Watson, of Connolly, Walton & Hammond, Anchorage, for Appellants. Theodore M. Pease, Jr., of Burr, Boney & Pease, Anchorage, for Appellees.

Before: Nesbett, Chief Justice, Dimond and Arend, Justices.

AREND, *Justice*.

The appeal in this case is from an order of the superior court denying a petition for review from the decision of the Alaska State Board of Education which affirmed the ruling of the Seward School Board that the appellants should not be retained in their position as school teachers at Seward, Alaska.

In March of 1960 the Seward School Board notified the appellants that it had decided not to retain them as teachers in the school system for the next school year, primarily on grounds of immoral conduct. At the request of the appellants a hearing was held before the School Board in April of 1960. This resulted in the Board affirming its

previous decision. The appellants then appealed to the State Board of Education which, after a hearing during the summer of 1960, remanded the case to the School Board for a new hearing and with directions to enter findings of fact and conclusions of law on any action taken. The School Board heard the case again in the fall of 1960, reaffirmed its first decision and lated entered findings of fact in support of its action.

The appellants appealed a second time to the State Board and that body in May of 1961 once more affirmed the decision of the School Board but without stating the basis for its ruling. The following month the appellants filed a petition for review in the superior court, attacking, for one thing, the failure of the State Board to enter findings of fact and conclusions of law to support its decision. Judge Fitzgerald of the superior court held a hearing on the petition and thereafter remanded the case to the State Board "to make specific findings of fact and enter concrete conclusions" of law. Without holding any further hearings, the State Board responded to the court's mandate on July 31, 1962, by rendering an opinion which sustained the School Board's nonretention of the appellant teachers, on two findings of immoral conduct and one of noncompliance with School Board Regulation E-7 regarding the channeling of complaints by school employees to the School Board.

In August of 1962 the appellants filed a second petition for review in the superior court alleging that the State Board acted arbitrarily and capriciously in that its findings and conclusions were not supported by substantial evidence. The petition was heard by Judge Gilbert who denied it summarily, without oral or written opinion and without setting forth any findings. The appellants have now appealed to this court and charge that the superior court erred in failing to vacate and reverse the State Board's decision of July 31, 1962.

The immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, "We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board," or words to that effect.

The appellants contend that to justify the discharge of a school teacher on grounds of immorality he must be shown to have conducted himself in a manner that would normally shock the conscience of good men and be sufficiently notorious to impair his services as a teacher in the community. To illustrate this concept of immorality the appellants draw examples from case law in which it was held to constitute immoral conduct for a teacher to imbibe intoxicating liquor on the school premises and offer it to students;[1] to misappropriate school funds;[2] to work as a cocktail waitress in a beer garden and, in the presence of school pupils, to drink beer, play a pinball machine and shake dice with customers for drinks;[3] or to make false statements as in a loyalty oath affidavit.[4]

In none of the cases cited by the appellants did the legislatures in authorizing school boards to dismiss teachers for immorality define that term. This left the courts concerned free to place their own construction upon the word having regard, of course, to the context in which the legislature used it. Thus a New Jersey court stated:

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[1] Tracy v. School Dist. No. 22, 70 Wyo. 1, 243 P. 2d 932 (1952).

[2] Appeal of Flannery, 406 Pa. 515, 178 A. 2d 751 (1962).

[3] Horosko v. School Dist., 335 Pa. 369, 6 A. 2d 866, *cert. denied*, 308 U.S. 553, 84 L. ed. 465 (1939).

[4] Negrich v. Dade County Bd. of Pub. Instruction, 143 So. 2d 498 (Fla. Dist. Ct. App. 1962).

> "Immorality" is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are *contra bonos mores,* inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2d ed.) [Italics in the original.][5]

The Alaska legislature, however, has seen fit to define "immorality." In providing for notification by the school board to an administrator or teacher of nonretention, "together with a clear statement of cause . . . for such nonretention,"[6] the legislature declared:

> The term "cause . . . shall be based solely upon: (a) Incompetency . . .; or (b) *Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;* or (c) Substantial noncompliance with the school laws . . . or . . . regulations. . . .[7] [Emphasis supplied]

It is evident from the legislature's definition of immorality that it did not confine the meaning of the term to conduct which would normally shock the conscience of good men or offend the morals of the community—definitions urged upon us by the appellants. Instead, the legislature adopted a much broader meaning for the word "immorality" as cause for the nonretention of a school teacher, for it stated that "immorality" should encompass any "conduct of the person tending to bring the individual concerned . . . into public disgrace or disrespect."

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[5] Appeal of Schneider, 12 N.J. Super. 449, 79 A. 2d 865, 870 (App. Div. 1951).

[6] § 37-5-11 ACLA Cum. Supp. (1957) [Now AS 14.20.140 and 14.20.150].

[7] § 37-5-12 ACLA Cum. Supp. (1957) [Now AS 14.20.170].

In the case at bar the Seward School Board found that the appellant Watts had solicited other teachers to join in an attempt to oust the school superintendent from his job and that Watts' conduct tended to bring him and the teaching profession into public disgrace or disrespect. They made a similar finding with respect to the conduct of the appellant Blue in making the speech to the labor union about getting rid of the School Board. The State Board of Education affirmed these findings and concluded that the conduct of the appellants constituted immorality as defined in the statute and provided sufficient grounds for their nonretention. The State Board further found that there was substantial evidence to support the School Board's findings.

Although there was some conflict in the testimony and although the appellants claim that the trial court should have reversed and vacated the decision of the State Board as not being supported by substantial evidence and as being contrary to law, we fail to find any error committed in the proceedings below. The School Board was the original fact finder and there was substantial evidence in the record to sustain their findings and the additional findings and legal conclusions of the State Board.

In our opinion the tactics shown to have been employed by the appellants to get the school superintendent and members of the School Board removed from their positions of responsibility in the community had a tendency to bring the appellants and the teaching profession into public disgrace or disrespect and sustained the administrative agency findings to that effect.[8]

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[8] See Keiner v. City of Anchorage, 378 P. 2d 406 (Alaska 1963), in which we held at page 411 that the findings of an administrative agency should not be reversed "if in the light of the whole record they are supported by substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

We agree with the statement made by the court in *Horosko* v. *School District*[9] that

> It has always been the recognized duty of the teacher to conduct himself in such way as to command the respect and good will of the community, though one result of the choice of a teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations. . . .[10]

We find it unnecessary to rule on the finding below that further cause for nonretention of the appellants was their alleged noncompliance with the School Regulation E-7 set forth in the margin.[11] However, for the guidance of those in the teaching profession we suggest that it will be in the best interests of the school children, the teachers and the community generally for teachers with grievances to follow an orderly procedure of seeking redress first at the superintendent level and then at the school board level.

The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble and speak freely have been abridged in this case and that they have been deprived of their personal liberties and

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[9] 335 Pa. 369, 6 A. 2d 866, *cert. denied*, 308 U.S. 553, 84 L. ed. 465 (1939).

[10] *Id.* at 868.

[11] Regulations E-7 of section I of the Seward School Board regulations provides as follows: "Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee or group of employees may at any time appeal to the Board."

Another regulation, E-9, states that "Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members."

property rights without due process of law. They treat the subject in a very cursory fashion and cite us to no case law in support of their claim. Under these circumstances we need not consider the point.

For the foregoing reasons the order of the superior court denying the appellants' second petition for review is affirmed.

Judgment

This matter was considered by the court on appeal from the Superior Court of the State of Alaska, Third Judicial District, at Anchorage.

It Is Ordered:

The order of the superior court, entered September 13, 1963, is affirmed.

Dated: September 21, 1964.

Buell A. Nesbett
Chief Justice

John H. Dimond
Associate Justice

Harry O. Arend
Associate Justice

Mandate

To: Superior Court of the State of Alaska, Third Judicial District, at Anchorage.

James A. Watts and Walter B. Blue filed an appeal from a judgment of the Superior Court, Third Judicial District, at Anchorage, in Civil Action No. 61-728, entitled "James A. Watts and Walter B. Blue, Petitioners, vs. Seward School Board and Board of Education, Appeal

HEARING COMMITTEE, Respondents." The case was heard by this court on April 20, 1964. On September 21, 1964, the court filed its written opinion and entered judgment affirming the judgment of the superior court.

It Is ORDERED:

1. The judgment of the superior court, entered September 13, 1963, is affirmed.

2. Appellees shall recover from appellants costs and attorney's fees as shown below.

WITNESS The Honorable Buell A. Nesbett, Chief Justice of the Supreme Court, State of Alaska, this 2nd day of October, 1964.

Costs and Attorney's Fees:

Duplicating Appellees' Brief	$102.50
Attorney's Fees	300.00
Total	$402.50

/s/ J. M. McPHETRES
Josephine M. McPhetres
Clerk, Supreme Court,
State of Alaska

[SEAL]

Office-Supreme Court, U.S.
FILED
MAR 24 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 743

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

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INDEX

	Page
Additional Statutes, Rules, and Bills Involved	1
The Decision of the Supreme Court of Alaska Rests on an Adequate Non-Federal Ground	3
The Question Presented by Petitioners Will Probably in the Very Near Future Be of Merely Isolated Significance Because Both Houses of the Alaska Legislature Have Passed Bills Which Rectify Any Possible Constitutional Infirmity in the Statute Under Which Petitioners Were Nonretained	9
Conclusion	11

INDEX OF CITATIONS

CASES:

District of Columbia v. Sweeney, 310 U.S. 631 (1940)	11
Edelman v. California, 344 U.S. 357 (1953)	9
Ellis v. Dixon, 349 U.S. 458 (1955)	9
Gregory v. Padilla, 379 P. 2d 951, 954-55 (Alaska, 1963)	6, 7
Joseph v. State, 236 Ind. 529, 141 N.E. 2d 109, 117 (1957)	8
Lumberman's Mutual Casualty Co. v. Continental Casualty Co., 387 P. 2d 104, 109 (Alaska, 1963)	3
Miller v. Board of County Commissioners of Natrona County, 76 Wyo. 502, 337 P. 2d 262, 271 (1959)	8
Olson v. McRae, 389 P. 2d 576, 578 (Alaska, 1964)	6
Parks v. Brown, 368 P. 2d 220, 222 (Alaska, 1962)	6, 7
Pollastrine v. Severence, 375 P. 2d 528, 531 (Alaska, 1962)	3
Preferred General Agency of Alaska, Inc. v. Rafetto, 391 P. 2d 951, 953 (Alaska, 1964)	6
Rice v. Sioux City Memorial Cemetery, Inc., 349 U.S. 70 (1955)	11
Stewart v. Hilton, 247 Iowa 988, 77 N.W. 2d 637, 642 (1956)	8
Thomson v. Wheeler Construction Co., 385 P. 2d 111, 114 (Alaska, 1963)	6
Veal v. Newlin, Inc., 367 P. 2d 155 (Alaska, 1961)	6, 7
Wolfe v. North Carolina, 364 U.S. 177 (1960)	9

Page

CONSTITUTIONS:

Constitution of thet United States:

First Amendment 4, 8

Fourteenth Amendment 4, 8

Constitution of the State of Alaska:

Article I, Sections 5, 6 and 7 4

STATUTES:

Alaska Code of Laws Annotated, 1949:

Section 37-5-12 9

Alaska Statutes:

14.20.170 ..... 1, 9

14.20.095 ..... 2, 11

RULES:

Rules of the Supreme Court of Alaska:

Rule 11 (a)(8) 2, 6

BILLS:

House Bill No. 25 (Alaska Legislature, 1965) 2, 10, 11

Senate Bill No. 6 (Alaska Legislature, 1965) 3, 10, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 773

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

ADDITIONAL STATUTES, RULES, AND BILLS INVOLVED

STATUTES:

Alaska Statute 14.20.170

Sec. 14.20.170 *Definition of cause.* (a) The causes for nonretention are

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner;

(2) immorality, which is defined as conduct of the person tending to bring the individual con-

cerned or the teaching profession into public disgrace or disrespect;

(3) substantial noncompliance with the school laws of the state or the regulations of the department of or the applicable regulations of any other governmental agency or the employing school district.

Alaska Statute 14.20.095

Sec. 14.20.095 *Right to Comment and Criticise Not to be Restricted.* No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

RULES:

Alaska Supreme Court Rule 11 (a)(8)

This brief shall contain in the order here stated the following . . . (8) The argument, stating clearly the points of fact and of law being discussed, with references to the pages of the record and authorities relied upon in support of each point. When a statute, regulation, ordinance, or opinion is cited, so much thereof as may be deemed necessary to the decision of the case shall be set out verbatim, either at this point, or if the matter quoted is lengthy, in an appendix.

BILLS:

House Bill No. 25 (Alaska Legislature, 1965)

*Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to

perform *the teacher's customary* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and reenacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

Senate Bill No. 6 (Alaska Legislature, 1965)

"Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's *teaching* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and reenacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

THE DECISION OF THE SUPREME COURT OF ALASKA RESTS ON AN ADEQUATE NON-FEDERAL GROUND

Petitioners first alluded to the federal constitutional question presented here in the argument portion of their brief to the Supreme Court of Alaska.[1] The complete discussion of this question was as follows:

[1] Petitioners do not appear to have complied with Rule 23 (f) of the Rules of the Supreme Court of the United States which requires that the statement of the case in a petition for writ of certiorari seeking review of a state court judgment specify the stage in the state proceedings at which and the manner and method in which the federal questions sought to be reviewed were raised. Moreover, it is an established rule in Alaska, although not expressly relied upon by the court in this case, that questions not raised in the original proceedings will not be considered on appeal. *Pollastrine* v. *Severence*, 375 P. 2d 528, 531 (Alaska, 1962); *Lumberman's Mutual Casualty Co.* v. *Continental Casualty Co.*, 387 P. 2d 104, 109 (Alaska, 1963).

There are involved in this appeal issues far more fundamental than those heretofore mentioned. We submit that both the School Board and the State Board contrived to deprive appellants of valuable rights without according them due process of law. We further submit that the construction placed on #2(b) and #2(c) of Ch. 71, S.L.A. 1957 by the School Board and by the State Board and sanctioned by the lower court effectively abridged appellants' constitutional rights to assemble and speak freely.

Ours is a free society only because individual men are protected in their individual rights and liberties. It is both an anomaly and blessing that the very charters which establish our State and Federal governments also protect individual men in the exercise of their individual rights and liberties. The freedoms to speak out, to voice protest, to utter grievances and to assemble for such purposes are freedoms protected in both the Constitution of the United States (Amendments I, XIV #1) and the Constitution of the State of Alaska (Article I #5, 6 and 7). Appellants Watts and Blue legitimately exercised those constitutional rights—with heavy personal and financial sacrifice. The interpretation of Ch. 71, S.L.A. 1957 adopted by the School Board and by the State Board, putting appellants' teaching jobs in jeopardy because they voiced to others their dissatisfaction with the Seward School Board and the Superintendent, was an unconstitutional interpretation of that Act. The hearings conducted by the School Board and by the State Board, for the purpose of confirming the termination of appellants' employment as teachers, resulted in decisions which were palpably contrary to the law and evidence. This was a deprivation of appellants' personal liberties and property rights without due process of law.

Therefore, for these very fundamental reasons, originating in a political philosophy uniquely

> American, the ruling of the lower court must be reversed. If this court concurs in our contention then the decision of this case may endure as one additional segment of the bulwark against those ever-pressing currents of ignorance and acrimony always fed by men of fearful and faint heart.
>
> Appellants' brief, pages 30 and 31.

Respondent, Seward School Board, argued in its brief that petitioners' constitutional argument should not be considered because, among other things, it was too cursory and amorphous to permit reasoned and informed adjudication.

Petitioners, in their reply brief, apparently conceded the correctness of respondent's argument on this point. They stated, in full:

> THERE IS SOME MERIT IN APPELLEE'S CONTENTION THAT THE CONSTITUTIONAL ARGUMENT ADVANCED IN APPELLANTS' BRIEF IS AT BEST CURSORY
>
> This we must admit. However, in passing, we will point out that the case of *Veal* v. *Newlin, Inc., et al.*, Alaska, 1961, 367 P. 2d 155 is not in point: in that case the appellant included in his brief a Specification of Error which he failed to argue in his brief. We did argue the constitutional point, in support of our two Specifications of Error. But this part of our brief was admittedly cursory.
>
> Appellants' Reply Brief, page 6.

The Supreme Court of Alaska, in its opinion, declined to consider petitioner's constitutional argument. The court stated:

> The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble and speak freely have been abridged in this case and that they have been de-

> prived of their personal liberties and property rights without due process of law. They treat the subject in a very cursory manner and cite us to no case law in support of their claim. Under these circumstances we need not consider the point.

This was not an annunciation of a novel procedural rule of which petitioners could not have been apprised. Rule 11(a)8 of the Rules of the Supreme Court of Alaska, which was in existence when petitioners prepared their brief, provides in relevant part:

> This brief shall contain in the order here stated the following ... (8) The argument, stating clearly the points of fact and of law being discussed, with references to the pages of the record and authorities relied upon in support of each point.

The Supreme Court of Alaska has consistently held that cursory or non-specific discussions in which no attempt is made, by the citation of case law or otherwise, to relate the ideas advanced to the facts of the case do not comply with Rule 11(a) (8), and will not be considered by the court. *Veal* v. *Newlin, Inc.*, 367 P. 2d 155, 156-57 (Alaska, 1961); *Parks* v. *Brown*, 368 P. 2d 220, 222 (Alaska, 1962); *Gregory* v. *Padilla*, 379 P. 2d 951, 954-55 (Alaska, 1963); *Thomson* v. *Wheeler Construction Co.*, 385 P. 2d 111, 114 (Alaska, 1963); *Olson* v. *McRae*, 389 P. 2d 576, 578 (Alaska, 1964); *Preferred General Agency of Alaska, Inc.* v. *Rafetto*, 391 P. 2d 951, 953 (Alaska, 1964).

In *Veal* v. *Newlin*, 367 P. 2d 155 (Alaska, 1961), the court stated:

> But the brief contained no argument as to this issue in accordance with another requirement of the rule. It consisted only of a cursory statement to the effect that the trial judge unduly emphasized

> the issue of proximate cause to the point where he was telling the jury how to decide the case. The point was not elaborated upon. We must conclude from this that Veal's counsel believed the alleged error was not of sufficient importance to merit serious consideration by this court . . . .
>
> 367 P. 2d at 156.
>
> We believe that an appellant has a particular obligation to adequately prepare his case so as to be of assistance to this court. That was not done in this case. We consider this an appropriate occasion to remind counsel that the presentation of cases without adequate preparation discredits the bar and obstructs the administration of justice.
>
> 367 P. 2d at 157.

In *Parks* v. *Brown,* 368 P. 2d 220 (Alaska, 1962), the court said:

> The fact that much of appellants' brief is given to philosophical arguments by counsel on what he thinks the law should be in situations pertinent to his case and the further fact that the brief is woefully lacking in case decisions to support any of the ideas advanced therein leads us to the conclusion that the appeal is frivolous and was not taken in good faith.
>
> 368 P. 2d at 222.

And, in *Gregory* v. *Padilla,* 379 P. 2d 951 (Alaska, 1963), the court stated:

> With respect to his statement that exhibit 5 was not the best evidence and was hearsay, the defendant not only failed to cite us to any authority in support of these propositions or point out wherein he was prejudiced by admission of the document, but he has not even advanced in his brief what could be reasonably taken for an argument such

as is called for by Supreme Court Rule 11 (a) (8). Accordingly, we need not consider these two claims of the defendant.

379 P. 2d at 954-55.

It should therefore be clear that petitioners had fair prior warning of the requirements which were the basis for the court's decision in refusing to consider their constitutional argument. It should also be clear that petitioners did not meet these requirements. Their constitutional argument alludes to three federal constitutional infirmities: denial of procedural due process, abridgment of the freedom of speech, and abridgment of the right to assemble. These are complex and difficult points; a decision on any one of them would have fundamental implications in Alaska. Yet, petitioners did essentially nothing more than to refer generally to the First and Fourteenth Amendments to the Constitution of the United States. No attempt was made to relate the facts of the case to these amendments and no case law was cited to assist the court in rendering a reasoned and informed decision. Under these circumstances, the conclusion of the Supreme Court of Alaska that petitioners had failed to meet their obligation to present a reasonably helpful and cogent argument seems both justified and consistent with the court's previous rulings.

It cannot be said that the rule relied on by the Alaska Supreme Court constitutes an unreasonable interference with the vindication of federal rights. Many other state courts impose similar requirements. E.g., *Joseph* v. *State,* 236 Ind. 529, 141 N.E. 2d 109, 117 (1957); *Stewart* v. *Hilton,* 247 Iowa 988, 77 N.W. 2d 637, 642 (1956); *Miller* v. *Board of County Commissioners of Natrona County,* 76 Wyo. 502, 337 P. 2d 262, 271 (1959).

Nor is there any basis from which an inference might be drawn that the Supreme Court of Alaska interposed its rule in order to deprive petitioners of their federal rights.

Under these circumstances it is respectfully submitted that no federal question is before this court. *Wolfe* v. *North Carolina*, 364 U.S. 177 (1960); *Ellis* v. *Dixon*, 349 U.S. 458 (1955); *Edelman* v. *California*, 344 U.S. 357 (1953).

THE QUESTION PRESENTED BY PETITIONERS WILL PROBABLY IN THE VERY NEAR FUTURE BE OF MERELY ISOLATED SIGNIFICANCE BECAUSE BOTH HOUSES OF THE ALASKA LEGISLATURE HAVE PASSED BILLS WHICH RECTIFY ANY POSSIBLE CONSTITUTIONAL INFIRMITY IN THE STATUTE UNDER WHICH PETITIONERS WERE NONRETAINED

Petitioners' nonretention as teachers was based on conduct which was found to be immoral under the artful definition of that term contained in Sec. 37-5-12 (b) ACLA Cum. Supp. (1957). "Immorality" is there defined as "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect." In 1962 this definition, along with other previously existing nonretention provisions, was recodified as A.S. 14.20.170 (a):

> Sec. 14.20.170 Definition of cause. (a) The causes for nonretention are
>
> (1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner;
>
> (2) immorality, which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;

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(3) substantial noncompliance with the school laws of the state or the regulations of the department or the applicable regulations of any other governmental agency or the employing school district.

In February of 1965 each house of the Alaska Legislature passed nearly identical bills, both of which would repeal the definition of immorality under which petitioners were nonretained and re-define that term as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude."[2]

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[2] Senate Bill No. 6; House Bill No. 25 (1965).

Senate Bill No. 6 provides:

"Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's *teaching* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and re-enacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

House Bill No. 25 provides:

"Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform *the teacher's customary* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and re-enacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

These bills are presently in committee where the differences in their respective sections (1) are being resolved.

Since both houses of the Alaska Legislature have passed bills which are identical with respect to the manner in which the present definition of immorality is to be changed, it is highly probable that such change is soon to be enacted.[3] Of course, the result of this amendment will be that conduct similar to that of petitioners will no longer be a ground for nonretention. And such amendment, if it is law when the court considers the petition,[4] will constitute a sound basis for the denial of certiorari. *Rice* v. *Sioux City Memorial Cemetery, Inc.*, 349 U.S. 70 (1955); *District of Columbia* v. *Sweeney*, 310 U.S. 631 (1940).

CONCLUSION

For the foregoing reasons respondent prays that the petition for certiorari be denied or, if necessary, that

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[3] A bill obviously meant to complement House Bill No. 25 or Senate Bill No. 6 was formally enacted by the Alaska Legislature and signed by the Governor in the week of March 8, 1965. This act, which originated as House Bill No. 26 (1965) provides:

"Section 1. AS 14.20 is amended by adding a new section to Article 2 to read:

> Sec. 14.20.095. RIGHT TO COMMENT AND CRITICISE NOT TO BE RESTRICTED. No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

[4] Respondent will advise the clerk of all developments respecting House Bill No. 25 and Senate Bill No. 6, and will file a supplemental brief pursuant to Rule 41 (5) when and if either bill is enacted.

the final decision on the petition be postponed for a short time pending the expected imminent action of the Alaska Legislature which would rectify the claimed constitutional error.

Respectfully submitted,

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Dated: March 22, 1965